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A SUMMARY OF OUR MOST IMPORTANT LAND LAWS

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Aside from several acts providing for the satisfaction and location of warrants, issued for military service, and a number of acts relating to special and limited grants, the first act of a general character making provision for the survey and disposal of our public lands was the act of May 18, 1796 (1 Stat. 464). The title of this act is as follows: "An act providing for the sale of the lands of the United States in the Territory northwest of the Ohio River and above the mouth of the Kentucky River."

This act outlined and prescribed the system of surveying the public lands, in its essentials since adhered to, and provided for the disposal of the surveyed lands at public sale, partly on credit, to the highest bidder. The amendatory act of May 10, 1800 (2 Stat. 73), while adhering to this system of public sales, provided that lands not disposed of at any such sale might be sold at private sale, but in neither case at less than \$2 an acre. By the act of April 24, 1820, sales on credit were abolished and the minimum price at public and private sale was fixed at \$1.25 per acre, at which rate it has since remained. Lands, thus open to private sale, became known thereafter as offered lands, while surveyed lands that had not been exposed to public sale became known as unoffered lands. This act also gave a pre-emptive right to the extent of a section—640 acres—at \$2 per acre, to any person who had erected or had begun to erect a grist or saw mill on such section of land, subject to public or private sale. From this time on settlers on public lands were tolerated, and as a rule not deemed trespassers; and from time to time various acts were passed giving pre-emptive rights to those who had made settlements prior to the passage of the laws.

The first pre-emption law, however, of a general character, and prospective and continuing in its operation, was the act of September 4, 1841 (5 Stat. 453), authorizing a settlement to be made on

surveyed land, to which the Indian title had been extinguished, and giving a pre-emptive right thereto. This was subsequently amended so as to extend to unsurveyed, as well as surveyed land, to which the Indian title had been extinguished and which was not included in any reservation. The head of a family, a widow, or a single person over twenty-one years of age, who was a citizen or had declared his or her intention to become a citizen of the United States, and who was not the owner of 320 acres of land and who did not quit his own land to reside on the public land, was qualified as a settler and pre-emptor, under these laws. No settler could acquire more than 160 acres. If the settlement was made on offered land the settler must, within thirty days after initiating his settlement, file a notice and statement of his claim at the district land office and must make his final proof and payment for the land within twelve months after initiating settlement. If the settlement was on surveyed and unoffered land, he must file his statement within three months and make final proof and payment within thirty-three months from date of settlement; and if the settlement was made on unsurveyed land he must file his statement within three months after plat of survey was filed in the district land office and make his final proof and payment within thirty-three months thereafter. The minimum price was \$1.25 per acre. The law contemplated that the settler should occupy, improve and cultivate the land from date of first settlement until final proof and payment. The land department permitted final proof and payment to be made at the expiration of six months from date of settlement and much laxity prevailed in the district offices in the matter of proof of settlement and cultivation. Oftentimes claims were allowed to be "proved up" when there had been little or no residence, and the scantiest kind of improvements on the land. Payment could be made in cash, military bounty land warrants, agricultural college scrip, and a few other kinds of scrip. *Bona fide* settlers, as a rule, took the extreme time limit of the law for making final proof and payment and where they were unable to pay, they converted their claims into homestead entries, under the homestead law of the United States, as they had the right to do. Much of the land was "taken up" under the law by mere speculators who would "prove up" as soon as they could and then sell their claims for what they could get and leave the country.

In March, 1889, the law, allowing land to be secured at private sale, or by "private entry," was repealed, and thereafter the pre-emption law was utilized on behalf of those who desired to secure valuable timber lands and other lands in large quantities by hiring young men and women to "take up" pre-emption claims, and taking a transfer from them on "proving up," and paying them for "their time and trouble." The pre-emption law was finally repealed in March, 1891, as well as the law permitting public sales. The homestead law furnished ample facilities for the honest settler to acquire a home, while the pre-emption law had become, by this time, to a large extent, a mere instrument for acquiring land for speculative purposes, hence its repeal. It ought to have been repealed when the homestead law was enacted.

The most important, in many respects, of all our land laws, the law under which so many poor people have been enabled to secure for themselves happy homes, and under which our country has been so rapidly developed and settled, is the homestead act of 1862, a veritable home-builders' law. Under this law, as now amended, every person who is the head of a family, or who has arrived at the age of twenty-one years, and who is a citizen, or has declared his intention to become a citizen of the United States, and who is not the owner of 160 acres of land, may enter one quarter section or less of the "unappropriated public lands," at the district land office. After making such entry he must establish his residence on the land within six months thereafter and must continue from thenceforth to reside upon, cultivate and improve the land for the period of five years, at the end of which time, or within two years thereafter, on furnishing the required proof of compliance with the law, as to residence, improvement and cultivation, he is permitted to make final entry of the land, without paying anything therefor, except the land office fees, and thereupon patent will issue to him in due course. A person who has only declared his intention to become a citizen when making his first entry must be fully naturalized before he can make the final entry. Under the original law the homesteader acquired no right to the land before he made his first entry at the land office; but under an amendment to the law a homesteader may settle on unsurveyed land, and if he then makes entry of the land within three months after the plats of survey have been filed in the district land office his right to the land will date

from the time he initiated his settlement. In case the homesteader is unwilling to reside upon the land for the five years and is willing to pay for the land, he can "commute" his entry as under the pre-emption law. Originally he could "commute" after six months' residence, as under the pre-emption law, but under the law of 1891 this period was extended to fourteen months. "Commuting" consists in furnishing proof of residence and cultivation for the period of fourteen months and paying the minimum price, \$1.25 per acre, for the land. The land department originally construed the act of 1891 by counting the period of fourteen months from the date of the entry and inasmuch as the entryman had six months in which to establish his residence upon the land, it led to a residence and cultivation requirement of only eight months. This rule has now for some time been abandoned and fourteen months of actual and continued residence and cultivation is now required before an entry can be "commuted." The homestead law has proved a great blessing to the poor and needy settler in enabling him to pay for his farm by merely residing upon, improving and cultivating the same for the period of five years. Starting without any capital, except a zealous spirit and strong arms, he finds himself at the end of five industrious years the possessor of a good home, worth from three to six thousand dollars, and meanwhile he has been paying his taxes, furnishing trade and traffic for the merchant and the railroad, and living immune from the controversies recurring between capital and labor, because, in his case, capital and labor have been concentrated in one head. The one defect of the homestead law that has, to some extent, marred its greatest usefulness, has been the permission to "commute" and make final entry before the end of the five-year period. This was especially glaring and pronounced while "commutation" could be made in six months, and it is still very bad under the fourteen-months' limitation. The evil lies in the fact that so many "take claims" because of the commutation privilege, not for the purpose of a permanent home, but merely for the purpose of securing the land to hold for speculative purposes, as middle-men, to sell out at a profit to some actual and permanent settler. The real settler is in no hurry to make proof and final entry. He oftentimes avails himself of the seven-year period. It is, as a rule, the speculator—the man who does not care to live on the land—who is in a hurry to "prove up," and "commute," as it enables him, sooner or later,

to levy tribute on the actual and real settler. The speculative homestead commuter is not a home-builder, and does not deserve our help or sympathy. The area of public lands, suitable for farms, is rapidly diminishing, while our population is even more rapidly increasing. In times of great industrial stagnation, our public lands have proven a great safety valve—have proved themselves the haven where poor and industrious laboring men, forced out of employment and without work, could go to work in creating happy homes for themselves and their children, immune from the industrial stress prevailing in our large cities and manufacturing centers. This safety valve, this haven, should be preserved as long as possible, and the repeal of the “commutation” provision of the homestead law is one of the important means of such preservation. None but the real home-builders should have the benefit of that law.

Another important land law remains to be noticed. I refer to the timber and stone act of June 3, 1878, originally limited to the states of California, Oregon, Nevada and Washington, but subsequently, by the act of August 4, 1892, extended to all the public land states. Under this law any person who is a citizen, or has declared his intention to become a citizen of the United States, may purchase and acquire title to 160 acres of unappropriated, uninhabited and unreserved non-mineral public land of the United States, unfit for cultivation, and valuable chiefly for timber or stone, at the minimum price of \$2.50 per acre. Only one tract of 160 acres can be purchased by any person and before he can purchase the same, he must present to the register of the district land office his sworn statement, specifying, among other things, that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement, or contract, in any way or manner, with any person by which the title he may acquire shall inure to the benefit of any person but himself. False swearing renders the purchaser guilty of the crime of perjury and involves a forfeiture of the land and the money paid therefor. On its face this law, at first blush, seems harmless, and as though it was merely intended to give a settler an opportunity to secure some stone or timber for his own use and as an appurtenance to his farm holding, but no land law has proven more baneful in its operation to the welfare of the country than this. It has been made the vehicle through which a

few of the big lumbermen of the country have secured and monopolized thousands of acres of our most valuable timber lands, and this has been carried on to such an extent that but a limited supply would still remain were it not for the fact that we have, in recent years, put much of our timber lands in forest reservations.

The mode in which these lumbermen have carried on their operations has been, in the main, and in outline, this: They have, in person or through agents and employees, secured, by divers means, a large number of men and women, in various parts of the country—people who knew nothing about such lands, and who had no thought of acquiring the same—to apply to purchase and enter such lands, supplying them with money to travel from remote, interior towns to examine and select the land and make the necessary application to purchase at the district land office, and supplying them with money to pay for the land, and then after the purchase and entry were completed procure a conveyance of the land to themselves for a moderate bonus. These dummy purchasers—for they were in fact in most cases nothing else—would be approached in the first instance like this: “I know where you can make some money by taking a timber and stone claim. It will cost you only \$2.50 per acre and you can easily sell it as soon as you get title for an advance of \$200 or \$300, or perhaps more.” “But I have no money with which to go and examine and purchase the land.” “That does not matter; I know a friend who will advance you the money and will take the land off your hands at a good profit as soon as you get title, but you must keep this matter to yourself.” The temptation to make money in this easy way is so alluring that many act on the suggestion and thus become the instrumentality of the big lumberman. I remember how, a few years ago, a large number of lady school teachers in a western city—the headquarters of some big lumbermen—were induced to “take up” timber and stone claims in Oregon, Washington and California, more than 1500 miles from where the teachers lived. Most of these lands afterwards passed into the hands of these lumbermen.

A large portion of our timber lands in the western states, outside of the government forest reservations, has, in recent years, largely under operations such as I have mentioned, passed into the hands of large lumber syndicates, who have well-nigh secured a monopoly of our timber supply. There are still in various localities in the

western states bodies of timber land that ought to be preserved and conserved for the present and future welfare of the people of the United States. These lands ought not to be sold, but should be retained by the Government and the timber on them should be conserved, and only the old and mature timber should, from time to time, be sold under suitable rules and regulations, to the end that our people may not become entirely helpless under the timber monopolies now hovering like a dark cloud over our country.

Holding these views, to me it seems clear that the timber and stone law should at once be repealed. Nearly five years ago the Senate passed a bill repealing the law, but the bill met with defeat in the House. While much has been lost since then, there is still something to save, and speedy action should be taken.

It remains to notice another important land law, now obsolete, which, while passed for a good purpose, proved, to a large extent, abortive and a source of speculation. I refer to the timber culture act of March 13, 1874, entitled "An act to encourage the growth of timber on the western prairies," largely amended and modified by the act of June 14, 1878. As thus amended and modified, the law authorized the entry of a quarter section, or less, of treeless land, by any person who was the head of a family, or who had arrived at the age of twenty-one years, and who was a citizen, or had declared his intention to become a citizen of the United States, for the purpose of timber culture. The conditions for acquiring a complete title were, in brief, that the entryman should plant, protect, and keep in a healthy, growing condition for eight years ten acres of timber on a quarter section, five acres on an eighty, or two and one-half acres on a forty-acre tract. On furnishing proof of compliance with these conditions final entry would be allowed and patent would issue. No residence on the land was required. In its practical operation it took ten years to acquire full title under this law. The first year was devoted to breaking the land, the second year to planting the trees, and the remaining eight years to the care, growth and propagation of the trees. The purpose to promote the growth of timber on the western prairies was most laudable, but to a large extent, partly through climatic conditions, but largely through neglect and want of care on the part of the entryman, comparatively few claims became forested or timbered. The entryman was usually one who held a homestead or pre-emption

claim, and he took advantage of this law to get another 160 acres of land. He would break and plant, but *not* otherwise give much attention to the trees. He would do just enough to keep the land in chancery for ten years, in the meantime keeping others from getting it, then "prove up" his homestead, or pre-emption claim, and then relinquish his tree claim and enter the land either under the homestead or pre-emption law, whichever of the two rights he had not used and exhausted. Then, too, many tree claims were "proved up" on, to say the least, very questionable, if not perjured, testimony. Another favorite way was for the timber entryman, after holding his claim for two or three years, to relinquish his claim for a good consideration in favor of some settler who was anxious to secure the land as a homestead. There was quite a speculation for a time in timber claim relinquishments. In short, the law, in its practical operation, proved, on the whole, a rather scant timber producer, and the source of some fraud and much speculation. By the act of March 3, 1891, the law was finally repealed with some saving provisions for existing claims.

There are some other important land laws, such as the desert land law, the reclamation land law, and the so-called Carey law, all relating to the reclamation and settlement of arid lands, which are local in their scope and which I can not well describe in detail without unduly enlarging this paper. Various kinds of land scrip, or quasi-scrip, available for the location and entry of public lands, have, from time to time, been issued, such as military bounty land warrants, agricultural college scrip, Sioux half-breed scrip, Chippewa half-breed scrip, soldiers additional, Valentine scrip, Porterfield scrip, Supreme Court scrip, surveyor general scrip and forest reserve scrip. Most of this scrip has now been exhausted and but little of it remains to be located.

It must further be noted that large quantities of public lands have been, at various times, directly or indirectly, granted to railroad companies to promote the construction of railroads. Years ago there were limited grants made for the construction of canals and other waterway improvements, and for wagon roads; and the states, too, have received large and liberal grants for educational purposes, for reclaiming wet and overflowed lands, and for other purposes of internal and municipal improvements.

From this brief review of our public land system—if indeed
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such a varied and heterogeneous course of procedure can be called a system—it appears that the Government started out with the idea that it was desirable to dispose of the land as soon as possible at the highest obtainable price. The land was regarded simply as an asset to be converted into cash as soon as possible, hence the plan of public sale supplemented private sales. Many of the pioneers and frontiersmen, however, who pressed into the wilderness to make homes, were too poor to pay for the land immediately. So, in the first instance, they became mere squatters, but as they, and not the speculators who bought at public sale, were the real settlers who occupied, subdued and improved the public domain and became the nucleus and founders of municipal government, the Government began to see the necessity of giving them a helping hand. While still adhering to the purchasing idea, it gave them a first chance to buy, with a brief breathing spell in which to raise the necessary funds. Hence came the many special, and ultimately the general pre-emption, laws. The settler must still buy at the same price as the speculator, but he was given a chance to make a short start on his claim before paying the price. By and by, after much controversy, Congress finally came to the conclusion that it was more important to have the public domain “settled up,” as rapidly as possible by real home-builders, even without compensation, than to get money and turn the land over to a lot of middlemen for exploitation and profit. Hence came our homestead law, the wisest and best of all our varied land laws. While most of the lands, taken under our other land laws, have passed into the hands of real settlers and home-builders, yet these have had to render a large tribute to the speculators and middlemen who first purchased from the Government. The tribute these men received has been greater than the tribute they rendered the Government in the first instance.

My conclusion, from this brief survey of our land system is, that in view of the rapid increase of our population and in view of the rapidly diminishing area of our public domain, no agricultural land should be disposed of except under the homestead law without the “commutation” privilege; that none of our remaining forest lands should be disposed of, but only the large and mature timber; and that our arid lands should be disposed of for agricultural purposes to actual settlers under the reclamation law.